IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2131 OF 2006.
WITH
CRIMINAL WRIT PETITION NO. 2132 OF 2006.

Sashi Gopal. ... Petitioner.
(In both petitions)

Versus.

M.T.V.India Pvt.Ltd. & anr. ... Respondents.
(In both petitions)

Shri N.K.ThakOr i/by Shri Prakash Naik for the Petitioner in both petitions.

Ms.S.V.Gajare, A.P.P.for the Respondent-State in Cr.W.P. No.2131/06.

Shri Rajesh More, A.P.P. for the Respondent-State in Cr.W.P.No.2132/06.

CORAM : ABHAY S.OKA, J.

DATED : 10th October, 2006.

P.C.:

1. Heard the learned Counsel appearing for the Petitioner. The issue involved in both the petitions is the same. The Petitioner has been arraigned as an accused in the Complaints filed by the 1st Respondent under section 138 read with section 141 of the Negotiable Instruments Act, 1881. The Petitioner preferred Revision Applications before the Sessions Court for challenging the orders issuing process on the said complaints. The said Revision Applications have been rejected.

2. The submission of the learned Counsel for the Petitioner is that the complaints filed by the 1st Respondent were not maintainable as there was no clear

demand of the cheque amount as contemplated by section 138(b) of the said Act of 1881. He submitted that in the notice which is the basis of the complaints, there are two different and distinct demands made under two different statutes. He pointed out that the first demand is under the said Act of 1881 and the second demand is under sections 433 and 434 of the Companies Act, 1956. He pointed out that the demand under the Companies Act is for a different amount. He, therefore, submitted that there is no proper notice as laid down by the Apex Court in the case of K.R.Indira v/s. G.Adinarayana [(2003) 8 S.C.C. 300].

3. I have considered the submissions. The requirement of section 138(b) is that the payee or holder in due course of the cheque shall make a demand for payment of the amount of money payable under the dishonoured cheque by giving a notice in writing to the drawer of the cheque. Paragraph 7 of the notice reads thus:

> "7. In the circumstances we are instructed by our client to call upon you, which we hereby do, **to pay to our clients the value of the above dishonoured cheque i.e. Rs.30,00,000/- by a Demand Draft within 15 days from the receipt of this notice by you, failing which our clients will be filing a**

criminal proceeding in the appropriate Magistrate's Court against you all under section 138 read with 141 of the Negotiable Instruments Act 1881 at your risk, costs and consequences, which please note." (Emphasis supplied)

In my view there is a clear demand in the said notice of the amount payable under the dishonoured cheque. The Petitioner is also informed by the said notice that if the demand is not complied with within a period of 15 days from the date of the notice, criminal proceedings under section 138 read with section 141 of the said Act of 1881 will be filed.

4. As there is a clear demand contemplated by section 138(b) of the said Act of 1881, merely because there is also a demand for a different amount under sections 433 and 434 of the Companies Act, 1956, notice will not become invalid. Such hypertechnical approach cannot be adopted while construing a notice of demand under section 138(b) of the said Act of 1881. There is no merits in the petitions. The same are rejected.

Judge.